UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UPSTATE NEW YORK ENGINEERS HEALTH FUND, by Daniel P. Harrigan, as Administrator; UPSTATE NEW YORK ENGINEERS PENSION FUND, by Daniel P. Harrigan, as Administrator; UPSTATE NEW YORK ENGINEERS S.U.B. FUND, by Daniel P. Harrigan, as Administrator; UPSTATE NEW YORK ENGINEERS TRAINING FUND, by Theron Hogle and Eugene Hallock, as Trustees; LOCAL 106 TRAINING AND APPRENTICESHIP FUND, by Daniel J. McGraw and Eugene Hallock, as Trustees; CENTRAL PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS, by Michael R. Fanning, as Chief Executive Officer; UPSTATE NEW YORK OPERATING ENGINEERS, LOCAL 158, by Daniel McGraw, as Business Manager,

Plaintiffs,

– against –

CASALE CONSTRUCTION SERVICES, INC. and CHARLES CASALE, Individually and as an Officer of Casale Construction Services, Inc.,

Defendants.

COMPLAINT

Civil Action No.

5:17-cv-253 (LEK/TWD)

Plaintiffs, by their undersigned attorneys, Blitman & King LLP, complaining of the Defendants, respectfully allege as follows:

I. JURISDICTION AND VENUE

1. This is an action arising under the Employee Retirement Income Security Act of 1974 [hereinafter "ERISA"] [29 U.S.C. §§1001 et seq.]. It is an action by fiduciaries of an employee benefit plans for monetary and injunctive relief to redress violations of ERISA Sections 404, 406, 409 and 515 [29 U.S.C. §§ 1104, 1106, 1109 and 1145]. It is also an action under Section 502(a)(2) for breach of fiduciary duty against employers that failed to timely remit contributions and otherwise abide by the documents that establish and maintain ERISA covered plans [29 U.S.C. §1132(a)(2)].

2. This is also an action arising under Section 301(a) of the Labor-Management Relations

Act of 1947, as amended [hereinafter "LMRA"] [29 U.S.C. §185(a)]. It is a suit for, among other things, violations of a contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in the LMRA [29 U.S.C. §141 et seq.].

3. Jurisdiction is conferred on this Court by ERISA Section 502(e)(1) [29 U.S.C. §1132(e)(1)], without respect to the amount in controversy or the citizenship of the parties, as provided in ERISA 502(f) [29 U.S.C. §1132(f)].

4. Jurisdiction is also conferred on this Court, without respect to the amount in controversy, pursuant to LMRA Section 301(a) [29 U.S.C. §185(a)], and pursuant to federal law [28 U.S.C. §1337].

5. Venue is established in this Court by ERISA Section 502(e)(2) [29 U.S.C. §1132(e)(2)] and LMRA Section 301(c) [29 U.S.C. §185(c)]. It is an action brought in the district where some of the plans are administered, where the breach took place, and where Defendants reside.

6. This is an action arising under 28 U.S.C. §1367. It is an action where all non-federal claims raised in the Complaint are so related to the federal claims as to form part of the same case or controversy within the meaning of Article III of the United States Constitution such that this Court may exercise supplemental jurisdiction over those non-federal claims.

II. DESCRIPTION OF THE PARTIES

7. Plaintiff Daniel P. Harrigan is the Administrator of the Upstate New York Engineers Health Fund [hereinafter "Health Fund"]. The Health Fund is administered within the Northern District of New York, at 101 Intrepid Lane, P.O. Box 100-Colvin Station, Syracuse, New York 13205. Mr. Harrigan is a fiduciary of the Health Fund, as defined in Section 3(21)(A) of ERISA [29 U.S.C. §1002(21)(A)].

8. Plaintiff Daniel P. Harrigan is the Administrator of the Upstate New York Engineers Pension Fund [hereinafter "Pension Fund"]. The Pension Fund is administered within the Northern District of New York, at 101 Intrepid Lane, P.O. Box 100-Colvin Station, Syracuse, New York 13205. Mr. Harrigan is a fiduciary of the Pension Fund, as defined in Section 3(21) (A) of ERISA [29 U.S.C. §1002(21)(A)].

9. Plaintiff Daniel P. Harrigan is the Administrator of the Upstate New York Engineers S.U.B. Fund [hereinafter "S.U.B. Fund"]. The S.U.B. Fund is administered within the Northern District of New York, at 101 Intrepid Lane, P.O. Box 100-Colvin Station, Syracuse, New York 13205. Mr. Harrigan is a fiduciary of the S.U.B. Fund, as defined in Section 3(21)(A) of ERISA [29 U.S.C. §1002(21)(A)].

10. Plaintiffs Theron Hogle and Eugene Hallock are Trustees of the Upstate New York Engineers Training Fund [hereinafter "Training Fund"]. The Training Fund is administered within the Northern District of New York, at 3174 Brighton-Henrietta Townline Road, Rochester, New York 14613. Mr. Hogle and Mr. Hallock are fiduciaries of the Training Fund, as defined in Section 3(21) (A) of ERISA [29 U.S.C. §1002(21)(A)]. [The Health Fund, Pension Fund, S.U.B. Fund and Training Fund are hereinafter collectively referred to as "Upstate New York Engineers Funds"].

11. Plaintiff Michael R. Fanning is the Chief Executive Officer of the Central Pension Fund of the International Union of Operating Engineers and Participating Employers [hereinafter "Central Pension Fund"]. Mr. Fanning is a fiduciary of the Central Pension Fund, as defined in Section 3(21) (A) of ERISA [29 U.S.C. §1002(21) (A)]. The Central Pension Fund maintains an office and principal place of business at 4115 Chesapeake Street, N.W., Washington, D.C. 20016.

12. Plaintiffs Daniel J. McGraw and Eugene Hallock are Trustees of the Local 106 Training and Apprenticeship Fund [hereinafter "Local 106 Training Fund"]. Trustees McGraw and Hallock are

fiduciaries of the Local 106 Training Fund, as defined in Section 3(21)(A) of ERISA [29 U.S.C. § 1002(21)(A)]. The Local 106 Training Fund maintains an office and principal place of business at 44 Hannay Lane, Glenmont, New York 12077. [Upstate New York Engineers Funds, Central Pension Fund and Local 106 Training Fund are collectively referred to as "Funds" or "Plans"].

13. Plaintiff Daniel J. McGraw is Business Manager of Upstate New York Operating Engineers, Local No. 158 [hereinafter "Union"]. The Union is the successor in interest to Local Union 106, 545 and 832 via a merger effective January 1, 2011. The Union is an unincorporated association maintaining its principal office and place of business at 44 Hannay Lane, Glenmont, New York 12077. The Union is a labor organization in an industry effecting commerce within the meaning of the Labor-Management Relations Act of 1947, as amended [29 U.S.C. §141 et seq.]. The Union represents employees with respect to the terms and conditions of employment, including, but not limited to, wages, benefits and supplements and is permitted to commence this action on their behalf.

14. The Funds, established pursuant to a collective bargaining agreement, are multi-employer plans as defined in § 3(37) of the Act [29 U.S.C. § 1002(37)] and are employee benefit plans as described in § 3(3) of the Act [29 U.S.C. § 1002(3)].

15. Upon information and belief, Defendant Casale Construction Services, Inc. [hereinafter referred to as "Defendant Corporation"] is incorporated under the laws of the State of New York, has a principal place of business and offices located at 551 Main Avenue, Wynantskill, New York 12198, and, at all times relevant herein, was authorized to do and was doing business in the State of New York.

16. Upon information and belief, Defendant Charles Casale [hereinafter "Defendant C. Casale"], is an officer and shareholder of Defendant Corporation. Upon information and belief, Defendant C. Casale resides at 551 Main Avenue, Wynantskill, New York 12198.

17. Defendants are employers in an industry affecting commerce, all as defined in ERISA Section 3(5)(11) and (12) [29 U.S.C. § 1002(5)(11) and (12)]. Defendants are also employers of employees covered by an employee benefit plan and multiemployer plan maintained pursuant to a collective bargaining agreement, all as defined in ERISA Sections 3(3) and (37) [29 U.S.C. § 1002(3) and (37)], and are obligated to make contributions to the Funds in accordance with ERISA Section 515 [29 U.S.C. § 1145].

18. Defendants are parties in interest with respect to the Funds as defined in ERISA Section 3(14)(C), (E) and (H) [29 U.S.C. § 1002(14)(C), (E) and (H)] and act directly as employers and/or indirectly in the interests of the employers in relation to the Funds, all as defined in ERISA Section 3(5) [29 U.S.C. § 1002(5)].

19. To the extent that Defendants exercised any authority or control with respect to the management or disposition of assets of Plaintiff Funds, they are fiduciaries within the meaning of ERISA Section 3(21)(A) [29 U.S.C. §1002(21)(A)].

III. FIRST CAUSE OF ACTION

20. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs "1" through "19 " inclusive of this Complaint as if set forth fully at this point.

21. ERISA Section 515 [29 U.S.C. § 1145] provides that:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

22. At all times relevant herein, Defendant Corporation was party to a collective bargaining agreement with the Labor Relations Division, Albany Region, Rochester Region, Central New York

Region, Associated General Contractors of New York State LLC and the International Union of Operating Engineers, Local Union 158 ["CBA"], which CBA was executed by Defendant Corporation on September 4, 2012.

23. Pursuant to the CBA, the Defendant Corporation is bound by the terms and conditions, rules and regulations of the Agreement and Declaration of Trust of the Upstate New York Engineers Health Fund, the Agreement and Declaration of Trust of the Upstate New York Engineers Pension Fund, the Agreement and Declaration of Trust of the Upstate New York Engineers S.U.B. Fund, the Agreement and Declaration of Upstate New York Engineers Training Fund, the Agreement and Declaration of Trust of the Central Pension Fund of the International Union of Operating Engineers and Participating Employers, the Agreement and Declaration of Trust of the Local 106 Training Fund, and the Upstate New York Engineers' Funds' Collections Policy [hereinafter "Trusts" and "Collections Policy"].

24. The CBA, Trusts and Collections Policy obligate Defendants to remit contributions to the Funds.

25. The CBA requires the Defendants to pay contributions to the Funds for each hour worked by their employees who performed work covered by the CBA.

26. The CBA requires the Defendant Corporation to deduct from each of its employees' wages stipulated sums for each hour worked and pay said amounts to the Union, said amounts representing Union dues, Voluntary Political Action Fund [V.P.A.F.] monies, and Defense Fund ["Defense Fund"] monies.

27. The CBA, Trusts and Collections Policy obligate the Defendants to file their remittance reports and remit contributions by the fifteenth (15th) day of the month following the month during which the hours were worked by their employees.

28. In addition to the above and pursuant to the CBA, the Trusts, the Collections Policy and 29 U.S.C. §1132(g)(2), if the Defendant Corporation fails to timely remit contributions and deductions, it is liable not only for the amount of contributions and deductions due, but also for the following: (1) interest on the unpaid and untimely paid Upstate New York Engineers Funds contributions, at the rate of two percent (2%) per month; (2) the greater of interest on the unpaid and untimely paid Upstate New York Engineers Funds contributions or liquidated damages equal to twenty percent (20%) of those delinquent contributions; (3) interest on the unpaid and untimely paid Local 106 Training Fund contributions, at the rate prescribed by ERISA; (4) interest again on the unpaid and untimely paid Local 106 Training Fund contributions, at the rate prescribed by ERISA; (5) interest on the unpaid and untimely paid Central Pension Fund contributions, at the rate of nine percent (9%) per annum; (6) the greater of interest on the unpaid and untimely paid Central Pension Fund contributions or liquidated damages equal to twenty percent (20%) of those delinquent contributions; (7) interest on the unpaid and untimely paid Union dues and V.P.A.F. monies at the rate of nine percent (9%) per annum; plus (8) costs and fees of collection and attorneys' fees.

29. Defendant Corporation is contractually liable under the CBA, Trusts and Collections Policies to timely report on a monthly basis the number of hours of bargaining unit work, i.e. work covered by the CBA, performed by its employees.

30. The CBA, Trusts, the Collections Policies and ERISA obligate Defendant Corporation to permit the Plaintiffs, on demand, to check, examine and audit its books and records, papers and reports as may be necessary to permit the Plaintiffs to determine whether Defendant Corporation accurately reported the number of hours of bargaining unit work performed by its employees and to determine the amount of contributions due and owing to Plaintiffs, including, but not limited to, its payroll

records, timecards, accounts payable records, general ledgers, cash disbursements journal, hours reports, tax returns and any other records relating to hours worked by all employees, including union, non-union, bargaining unit and non-bargaining unit employees, subcontractors, and independent contractors of Defendant Corporation.

31. Defendant Corporation is contractually liable under the CBA, Trusts and Collections Policy to pay the costs and expenses of the audit, all auditing fees, and any and all attorneys' and paralegal fees and costs incurred by the Plaintiffs in obtaining the audit.

32. Defendant Corporation has failed to produce its book and records for an audit, despite Plaintiffs' request.

33. Defendant Corporation must be ordered to produce its books and records for the period November 2015 to date for Plaintiffs' review and audit, to pay the cost and expense of such audit, to pay all auditing fees, and to pay all attorneys' and paralegal fees and costs incurred in obtaining that audit.

34. In the event it is discovered that Defendant Corporation has not properly submitted accurate reports to the Plaintiffs and has not properly paid the appropriate monies to the Plaintiffs, the Court must enter a judgment for any and all contributions and deductions that are determined to be due, plus the applicable interest thereon, liquidated damages, costs and expenses of collection, audit fees and attorneys' and paralegal fees, all at the rates set forth in Complaint paragraph no. 28.

IV. SECOND CAUSE OF ACTION

35. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs "1" through "34" inclusive of this Complaint as if set forth fully at this point.

36. Under the CBA, the Trusts, and the Collections Policy, Defendants are obligated to remit fringe benefit contributions and deductions by the fifteenth (15th) day of the month following the month during which the hours were worked by its employees.

37. Defendant Corporation untimely remitted $302,111.01 in fringe benefit contributions and deductions to the Funds and Union for the period June 2014 through August 2016, failing to remit those monies by the fifteenth (15th) day of the month following the month during which the hours were worked by its employees.

38. As a result of the Defendants' untimely remittance of the $302,111.01 to the Funds and Union, the Defendants owe $20,141.34 in interest, $54,502.40 in liquidated damages, plus all costs and fees of collection and attorneys' and paralegal fees incurred by the Funds and Union.

V. THIRD CAUSE OF ACTION

39. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "38"of this Complaint as if fully set forth herein.

40. ERISA Section 404(a) provides that fiduciaries must discharge their duties with respect to an ERISA covered plan "solely in the interest of the participants and beneficiaries" and "for the exclusive purpose of providing benefits" and "defraying reasonable administrative expenses" [29 U.S.C. §1104(a)(1)(A)].

41. ERISA Section 404(a) also provides that fiduciaries must discharge their duties "in accordance with the documents and instruments governing the plan insofar as such documents and instruments" are consistent with federal law [29 U.S.C. §1104(a)(1)(D)].

42. Absent an exemption, ERISA Section 406, 29 U.S.C. §1106, makes it unlawful for fiduciaries to permit ERISA covered plans to engage in certain transactions with parties in interest,

including transactions that exchange property or extend credit and to deal with plan assets for their personal account.

43. New York Lien Law Article 3-A provides that construction contractors and their officers, shareholders, directors, managers and agents must use monies earned for work at a construction project to pay the cost of, among other things, the employees' wages and benefits.

44. Effective September 17, 2003, the Agreements and Declarations of Trust for the Upstate New York Engineers Funds provide that: "[t]itle to all monies paid into and/or due and owing to [Plaintiff Plans is] vested in and remain[s] exclusively in the Trustees of the [Plaintiff Plans]; outstanding and withheld contributions constitute plan assets."

45. Since at least February 1, 1986, Section 4.2 of the Restated Agreement and Declaration of Trust of the Central Pension Fund of the International Union of Operating Engineers and Participating Employers has provided that: "[t]he Trustees are hereby vested with all right, title and interest in and to such moneys and all interest which may be accrued thereon, and are authorized to receive and be paid the same."

46. Upon information and belief, during the period June 2014 to date and in connection with various construction projects, Defendant Corporation employed individuals or subcontractors covered by the CBA who performed work on certain construction projects for the benefit of the projects and Defendants.

47. Upon information and belief, as a result of the work performed by employees, Defendants received sums of money related to construction projects intended to pay, among other things, the wages and benefits of employees furnishing and supplying the labor.

48. Defendant Charles Casale is a fiduciary of the monies so received and the monies so

received and held by him constitute assets of the Plaintiff Funds to be utilized for the benefit of the Plaintiff Funds.

49. Defendant Charles Casale, upon information and belief, had managerial discretion and control over the Defendant Corporation, made decisions on behalf of the Defendant Corporation, signed contracts governing the Defendant Corporation, and acted on behalf of and in the interest of the Defendant Corporation in its dealings and relations with Plaintiff Funds.

50. Defendant Charles Casale, upon information and belief, determined which creditors the Defendant Corporation would pay, determined when the Plaintiff Funds would be paid, determined how much money would be paid to the Plaintiff Funds, exercised control over money due and owing to the Plaintiff Funds, determined which employees of the Defendant Corporation would be reported to the Plaintiff Funds, and determined the number of hours upon which contributions would be reported as owing to the Plaintiff Funds, i.e., the Plaintiff Funds' assets, and, therefore, is a fiduciary.

51. Upon information and belief, Defendant Charles Casale transferred, applied used or diverted, or permitted the transfer, application, use, or diversion of, the Plaintiff Funds' trust assets to purposes other than purposes of the Plaintiff Funds without first making payment to Plaintiff Funds and, therefore, he is guilty of breaching his fiduciary duty.

52. To the extent that Defendant Charles Casale commingled, or permitted the commingling of, assets of the Plaintiff Funds with the Defendant Corporation's general assets and used, or permitted the use of, the Plaintiff Funds' assets to pay other creditors of the Defendant Corporation rather than forwarding the assets to the Plaintiff Funds, he is guilty of breaching his fiduciary duty.

53. To the extent that Defendant Charles Casale used the Plaintiff Funds' assets for purposes other than the interests of the Plaintiff Funds and their participants and beneficiaries, he is in violation

of §§1104, 1106, and 1109 of ERISA and the New York Lien Law.

54. Upon information and belief, Defendant Charles Casale, acting in his capacity as owner, officer, director, shareholder, and/or manager, abused his position as fiduciary by permitting, directing or instigating this transfer, application, or diversion of the Funds' assets in a manner contrary to his fiduciary obligation and, therefore, he has breached his fiduciary duties under ERISA, 29 U.S.C. §§1104 and 1109 and the New York Lien Law.

55. Upon information and belief, Defendant Charles Casale has withheld contributions from the Plaintiff Funds and/or untimely paid contributions to the Plaintiff Funds and, therefore, he has not acted solely in the interests of the participants and beneficiaries and he has acted contrary to the Plaintiff Funds' documents and, therefore, he is individually and personally liable for the violations of ERISA Section 404 described herein [29 U.S.C. §1104].

56. Since Defendants did not properly submit accurate reports to the Plaintiffs and Defendant Charles Casale did not properly pay and/or timely pay the appropriate monies to the Plaintiffs, Defendant Charles Casale has breached his fiduciary duty by the wrongful diversion and/or conversion of the Plaintiff Funds' assets, as mentioned above, and he is liable to the Plaintiff Funds for the following:

(A) Any monies discovered to be due as uncovered by the audit sought at paragraph Nos. 33 and 34 of the Complaint herein plus interest thereon at the rates set forth in Complaint paragraph No. 28 at the consolidated rate of return on Plaintiff Funds' investments, costs and expenses of collection, audit fees and attorneys and paralegal fees.

(B) To restore to the Plans any profits that Defendants made through use and retention of the assets of the Plans.

VI. FOURTH CAUSE OF ACTION

57. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1"

through "56" of this Complaint as if fully set forth herein.

58. Section 406 of the Act [29 U.S.C. §1106] provides that the following is illegal:

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107(a) of this title.

59. At all times relevant herein, Defendant Charles Casale was a party in interest with respect to the Plaintiff Funds.

60. Effective September 17, 2003, the Agreements and Declarations of Trust for the Upstate New York Engineers Funds provide that: "[t]itle to all monies paid into and/or due and owing to [Plaintiff Plans is] vested in and remain[s] exclusively in the Trustees of the [Plaintiff Plans]; outstanding and withheld contributions constitute plan assets."

61. Since at least February 1, 1986, Section 4.2 of the Restated Agreement and Declaration of Trust of the Central Pension Fund of the International Union of Operating Engineers and Participating Employers has provided that: "[t]he Trustees are hereby vested with all right, title and interest in and to such moneys and all interest which may be accrued thereon, and are authorized to receive and be paid the same."

62. At all times hereinafter mentioned, Defendants were obligated to timely remit contributions to the Plaintiff Funds as required by the CBA, Trusts and Collections Policy.

63. Defendants have not timely paid contributions to the Plaintiff Funds.

64. To the extent that Defendant Charles Casale has withheld contributions from the Plaintiff Funds, Defendant Charles Casale received and retained from the Plaintiff Funds for his own personal use and benefit, monies which are rightfully assets of the Plaintiff Funds.

65. To the extent that Defendant Charles Casale has withheld, received and retained the contributions, Defendant Charles Casale, as a party in interest, impermissibly used the assets of the Plaintiff Funds in contravention of §406 of the Act, the interests of the Plaintiff Funds and the interests of the Plaintiff Funds' fiduciaries, participants and beneficiaries.

66. Upon information and belief, Defendant Charles Casale has not properly submitted accurate reports to the Plaintiffs and has not properly paid the appropriate monies to the Plaintiffs and, therefore, he has damaged Plaintiffs and is liable to Plaintiffs for the following:

(A) Any monies discovered to be due as uncovered by the audit sought at paragraph Nos. 33 and 34 of the Complaint herein plus interest thereon at the rates set forth in Complaint paragraph No. 28 at the consolidated rate of return on Plaintiff Funds' investments, costs and expenses of collection, audit fees and attorneys and paralegal fees.

(B) To restore to the Plans any profits that Defendants made through use and retention of the assets of the Plans.

VII. FIFTH CAUSE OF ACTION

67. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "66" inclusive of this Complaint as if fully set forth herein.

68. If this Court does not enjoin Defendants from further violations of ERISA, LMRA, the Agreement, Trusts, and Collections Policies, Plaintiff Plans will be further damaged as a result thereof in ways and amounts which cannot be accurately measured in terms of money, either as to extent or amount.

69. Defendants have failed to comply with their obligations to the Plaintiff Plans, despite due demand for compliance, and thus, unless this Court enjoins Defendants from violating ERISA, LMRA, the Agreement, Trusts, and Collections Policies, Defendants will continue to fail to timely remit contributions, deductions and monthly remittance reports described herein, causing Plaintiff Plans and the beneficiaries of the Plans to incur additional serious and irreparable harm by further burdening and obstructing the administration and operation of the Plans and endangering the payment of promised benefits from the Plans to qualified beneficiaries.

70. Defendants' failure to comply with their obligations to the Plans has reduced the corpus and income of the Plans thereby jeopardizing the stability and soundness of the Plans.

71. Defendants' failure to comply with their obligations to the Plans may cause sufficient instability to the Plans' financial affairs such that participant benefits may be reduced or terminated.

72. Because Defendants continue to fail to comply with their obligations to the Plans, new delinquencies are now being created monthly, again depriving the Plans of adequate monies to pay promised benefits which in turn caused the foregoing irreparable harm to be intensified in magnitude.

73. Based on the foregoing instances of serious, substantial, and irreparable injury and damage, a mere money judgment is an inadequate remedy at law.

74. Unless this Court enjoins Defendants from breaching ERISA, LMRA, the Agreement, Trusts, and Collections Policies and unless Defendants are compelled to remit all monies and reports that become due or are determined to be due to Plaintiffs whether arising before or after commencement of the action, greater injury will be inflicted upon the Plans, their Trustees, participants and beneficiaries, by denial of relief than could possibly be inflicted upon Defendants by granting such relief.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. On Plaintiffs' First Cause of Action, judgment against the Defendant Corporation as follows:

(A) Requiring it to produce its books and records for Plaintiffs' review and audit for the period November 2015 to date, to pay the cost and expense of such audit, to pay all auditing fees, and to pay all attorneys and paralegal fees and costs incurred in obtaining that audit;

(B) For any and all contributions and deductions that are determined to be due, plus the applicable interest thereon, liquidated damages, costs and expenses of collection, audit fees and attorneys and paralegal fees, all at the rates set forth in Complaint paragraph No. 28.

2. On Plaintiffs' Second Cause of Action, judgment against the Defendants for $20,141.34 in interest, $54,502.40 in liquidated damages, plus all costs and fees of collection and attorneys' and paralegal fees incurred by the Funds and Union.

3. On Plaintiffs' Third and Fourth Causes of Action, judgment against the Defendant Charles Casale as follows:

(A) Any monies discovered to be due as uncovered by the audit sought at paragraph Nos. 33 and 34 of the Complaint herein plus interest thereon at the rates set forth in Complaint paragraph No. 28 at the consolidated rate of return on Plaintiff Funds' investments, costs and expenses of collection, audit fees and attorneys and paralegal fees.

(B) To restore to the Plans any profits that Defendants made through use and retention of the assets of the Plans.

4. On Plaintiffs' Fifth Cause of Action, judgment against the Defendants as follows:

(A) Judgment for any and all additional contributions and deductions that become due following commencement of the action or are determined to be due whether arising before or after commencement of the action, plus the applicable interest thereon, liquidated damages, costs and expenses of collection, audit fees and attorneys and paralegal fees, all at the rates set forth in Complaint paragraph no. 28;

(B) A permanent injunction preventing and restraining the Defendants from breaching the Agreement and Declarations of Trust, the Collections Policies, and the collective bargaining agreement by which they are bound;

(C) A permanent injunction directing the Defendants to perform and continue to perform their obligations to the Plaintiffs, specifically, directing them to timely furnish the required monthly remittance reports and payments to Plaintiffs, and to provide the Plaintiffs, upon demand and at Defendants' expense, access to their books and records for an audit and examination relating to the employment of their employees, including but not limited to weekly payroll reports, payroll journals and quarterly employer reports for various federal and state agencies.

DATED: March 2, 2017

BLITMAN & KING LLP

By: ______________________

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